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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,927	12/03/2003	John Rexroad	736-044	7011

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EXAMINER

QUINN, COLLEEN M

ART UNIT PAPER NUMBER

3634

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/727,927	<b>Applicant(s)</b> REXROAD, JOHN	
	<b>Examiner</b> Colleen M. Quinn	<b>Art Unit</b> 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 12-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Final Office action is in response to amendments filed November 3<sup>rd</sup>, 2006, in which claims 12 and 16-19 were amended.

#### ***Claim Objections***

Claim 1 is objected to because of the following informalities: It appears the applicant mistyped the word "member" as "ember" in claim 1, line 9. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12- 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds (US 6,098,750) in view of Powell (US 6,138,327).

Regarding claims 16-19, Reynolds discloses a net (60) along a support member (20,30,40,50), with a given diameter, a plurality of fasteners (95), a safety net (60), being of rectangular shape (Figure 1), having a border (perimeter of 60), the border being stretched along the support member and fastened to the support member. Reynolds fails to disclose a lock or rubberized sleeve about the fasteners.

Powell teaches a strap (10), having a first end (12), with a lock (22), a rubberized sleeve (18), and a second connecting end (14) that when pulled tight creates a variably constraining diameter, providing the user with an adjustable fastener. Therefore, it

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would have been obvious to one of ordinary skill, to use the straps provided by Powell, to connect the net to the support member provided by Reynolds, in order to offer a strap that locks to a given diameter and provides additional gripping support with the rubberized sleeve.

Regarding claims 12-15, it is inherent that the apparatus made obvious by the above combination would be assembled using the method described in applicant's claims. Therefore, applicant's claims 12-15 are rejected as being inherently part of the above mentioned inventions.

### ***Response to Arguments***

Applicant's arguments filed November 3<sup>rd</sup>, 2006 have been fully considered but they are not persuasive. The Applicant argues that the Examiner failed to establish a prima facie case of obvious by not presenting the motivation to combine the references presented, not establishing a reasonable expectation of success and not presenting a combination that teaches or suggests all the claimed limitations. The Applicant also accuses the Examiner of hindsight repeatedly throughout the arguments submitted.

In response to applicant's argument that the combination references does not teach each and every claim limitation, the Examiner encourages the applicant to review the rejection based above, and observe that the combination does indeed teach each all the claim limitations.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon

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hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Reynolds et al. disclose fasteners, for attaching a net to a support, the fasteners being "*spring snap links, or the like*" (Reynolds, Specification, column 2, line 37), suggesting the specific fastener type can be varied, as long as it performs the same function as the suggested spring snap links. Powell et al. teach a strap, having a rubberized sleeve, intended for binding items together, having a lock that can be adjusted depending on the size of the of the object the strap is wrapped around. The strap of Powel et al. is designed to provide security necessary for its function (Powell et al., Specification, column 1, lines 40-41), as well as flexibility and yieldability via the rubberized sleeve (Powell et al., Specification, column 1, lines 36-37), clearly teaching that the strap is intended for use in binding and locking around a variety of sizes of objects. Therefore, it would have

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been obvious to one of ordinary skill in the art; to attach the net of Reynolds et al. with a lock fastener, as taught by Powell et al. enabling the net to be attached to a variety of sizes of support members. For that same reason, it would be expected that the combination, as advanced above, would provide for a reasonable expectation of success, as it the combination is adaptable to lock to a variety of different sized objects.

In response to applicant's argument that the references presented are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, as advanced in the rejection above, the structural elements of Reynolds et al. is analogous to the applicant's claimed invention as Reynolds et al. discloses a rectangular safety net, having a border, supported along a support member, with a given diameter by a plurality of fasteners, the border being stretched along the support member and fastened to the support member.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the net has no sag) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571) 272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMQ  
11/17/06

  
**Peter M. Cuomo**  
**Supervisory Patent Examiner**  
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